

AMENDED IN ASSEMBLY AUGUST 24, 1998

AMENDED IN SENATE MAY 26, 1998

AMENDED IN SENATE APRIL 14, 1998

**SENATE BILL**

**No. 1900**

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**Introduced by Senator Schiff  
(Coauthor: Senator Haynes)**

February 19, 1998

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An act to amend Sections 1170, 1170.1, 1170.13, 1170.15, and 1170.95 of the Penal Code, relating to sentencing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1900, as amended, Schiff. Sentencing.

(1) Existing law limits the total of subordinate terms for offenses that are not violent felonies, including the offenses described in (2) below, to 5 years, except as otherwise provided by law.

This bill would delete that limitation and make additional conforming changes.

(2) Under existing law, if a person is convicted of a felony, and is also convicted of intimidation of a witness or victim, influencing testimony or information given to a law enforcement official, or a felony violation of soliciting the commission of certain offenses, that was committed with respect to the first felony, the subordinate term for each of these consecutive offenses shall consist of the full middle term of imprisonment for the felony for which a consecutive term of imprisonment is imposed, and shall include the full term prescribed for any enhancements imposed pursuant to

specified provisions for being armed with or using a deadly or dangerous weapon, or for inflicting great bodily injury.

This bill would include, for purposes of this provision, the full term prescribed for any enhancements imposed pursuant to any provision for being armed with or using a deadly or dangerous weapon, or for inflicting great bodily injury.

*(3) This bill would incorporate additional changes in Section 1170 of the Penal Code proposed by SB 295, to be operative if SB 295 and this bill are both enacted and become effective on or before January 1, 1999, and this bill is enacted last.*

*(4) This bill would incorporate additional changes in Section 1170.1 of the Penal Code proposed by AB 1290, to be operative if AB 1290 and this bill are both enacted and become effective on or before January 1, 1999, and this bill is enacted last.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1170 of the Penal Code is  
2 amended to read:

3 1170. (a) (1) The Legislature finds and declares that  
4 the purpose of imprisonment for crime is punishment.  
5 This purpose is best served by terms proportionate to the  
6 seriousness of the offense with provision for uniformity in  
7 the sentences of offenders committing the same offense  
8 under similar circumstances. The Legislature further  
9 finds and declares that the elimination of disparity and  
10 the provision of uniformity of sentences can best be  
11 achieved by determinate sentences fixed by statute in  
12 proportion to the seriousness of the offense as determined  
13 by the Legislature to be imposed by the court with  
14 specified discretion.

15 (2) Paragraph (1) shall not be construed to preclude  
16 programs, including educational programs, that are  
17 designed to rehabilitate nonviolent, first-time felony  
18 offenders. The Legislature encourages the development  
19 of policies and programs designed to educate and



1 rehabilitate nonviolent, first-time felony offenders  
2 consistent with the purpose of imprisonment.

3 (3) In any case in which the punishment prescribed by  
4 statute for a person convicted of a public offense is a term  
5 of imprisonment in the state prison of any specification of  
6 three time periods, the court shall sentence the  
7 defendant to one of the terms of imprisonment specified  
8 unless the convicted person is given any other disposition  
9 provided by law, including a fine, jail, probation, or the  
10 suspension of imposition or execution of sentence or is  
11 sentenced pursuant to subdivision (b) of Section 1168  
12 because he or she had committed his or her crime prior  
13 to July 1, 1977. In sentencing the convicted person, the  
14 court shall apply the sentencing rules of the Judicial  
15 Council. The court, unless it determines that there are  
16 circumstances in mitigation of the punishment  
17 prescribed, shall also impose any other term that it is  
18 required by law to impose as an additional term. Nothing  
19 in this article shall affect any provision of law that imposes  
20 the death penalty, that authorizes or restricts the  
21 granting of probation or suspending the execution or  
22 imposition of sentence, or expressly provides for  
23 imprisonment in the state prison for life. In any case in  
24 which the amount of preimprisonment credit under  
25 Section 2900.5 or any other provision of law is equal to or  
26 exceeds any sentence imposed pursuant to this chapter,  
27 the entire sentence, including any period of parole under  
28 Section 3000, shall be deemed to have been served and  
29 the defendant shall not be actually delivered to the  
30 custody of the Director of Corrections. However, that  
31 sentence shall be deemed a separate prior prison term  
32 under Section 667.5, and a copy of the judgment and other  
33 necessary documentation shall be forwarded to the  
34 Director of Corrections.

35 (b) When a judgment of imprisonment is to be  
36 imposed and the statute specifies three possible terms,  
37 the court shall order imposition of the middle term, unless  
38 there are circumstances in aggravation or mitigation of  
39 the crime. At least four days prior to the time set for  
40 imposition of judgment, either party or the victim, or the

1 family of the victim if the victim is deceased, may submit  
2 a statement in aggravation or mitigation to dispute facts  
3 in the record or the probation officer's report, or to  
4 present additional facts. In determining whether there  
5 are circumstances that justify imposition of the upper or  
6 lower term, the court may consider the record in the case,  
7 the probation officer's report, other reports including  
8 reports received pursuant to Section 1203.03 and  
9 statements in aggravation or mitigation submitted by the  
10 prosecution, the defendant, or the victim, or the family of  
11 the victim if the victim is deceased, and any further  
12 evidence introduced at the sentencing hearing. The  
13 court shall set forth on the record the facts and reasons for  
14 imposing the upper or lower term. The court may not  
15 impose an upper term by using the fact of any  
16 enhancement upon which sentence is imposed under any  
17 provision of law. A term of imprisonment shall not be  
18 specified if imposition of sentence is suspended.

19 (c) The court shall state the reasons for its sentence  
20 choice on the record at the time of sentencing. The court  
21 shall also inform the defendant that as part of the  
22 sentence after expiration of the term he or she may be on  
23 parole for a period as provided in Section 3000.

24 (d) When a defendant subject to this section or  
25 subdivision (b) of Section 1168 has been sentenced to be  
26 imprisoned in the state prison and has been committed to  
27 the custody of the Director of Corrections, the court may,  
28 within 120 days of the date of commitment on its own  
29 motion, or at any time upon the recommendation of the  
30 Director of Corrections or the Board of Prison Terms,  
31 recall the sentence and commitment previously ordered  
32 and resentence the defendant in the same manner as if  
33 he or she had not previously been sentenced, provided  
34 the new sentence, if any, is no greater than the initial  
35 sentence. The resentence under this subdivision shall  
36 apply the sentencing rules of the Judicial Council so as to  
37 eliminate disparity of sentences and to promote  
38 uniformity of sentencing. Credit shall be given for time  
39 served.



(e) (1) Notwithstanding any other law and consistent with paragraph (1) of subdivision (a) of Section 1170, if the Director of Corrections or the Board of Prison Terms or both determine that a prisoner satisfies the criteria set forth in paragraph (2), the director or the board may recommend to the court that the prisoner's sentence be recalled.

(2) The court shall have the discretion to resentence or recall if the court finds both of the following:

(A) The prisoner is terminally ill with an incurable condition caused by an illness or disease that would produce death within six months, as determined by a physician employed by the department.

(B) The conditions under which the prisoner would be released or receive treatment do not pose a threat to public safety.

The Board of Prison Terms shall make findings pursuant to this subdivision before making a recommendation for resentence or recall to the court. This subdivision does not apply to a prisoner sentenced to death or a term of life without the possibility of parole.

(3) Within 10 days of receipt of a positive recommendation by the director or the board, the court shall hold a hearing to consider whether the prisoner's sentence should be recalled.

(4) The prisoner or his or her family member or designee may request consideration for recall and resentencing by contacting the chief medical officer at the prison or the Director of Corrections. Upon receipt of the request, if the director determines that the prisoner satisfies the criteria set forth in paragraph (2), the director or board may recommend to the court that the prisoner's sentence be recalled. The director shall submit a recommendation for release within 30 days in the case of inmates sentenced to determinate terms and, in the case of inmates sentenced to indeterminate terms, the director may make a recommendation to the Board of Prison Terms with respect to the inmates who have applied under this section. The board shall consider this information and make an independent judgment

1 pursuant to paragraph (2) and make findings related  
2 thereto before rejecting the request or making a  
3 recommendation to the court. This action shall be taken  
4 at the next lawfully noticed board meeting.

5 (5) Any recommendation for recall submitted to the  
6 court by the Director of Corrections or the Board of  
7 Prison Terms shall include one or more medical  
8 evaluations, a postrelease plan, and findings pursuant to  
9 paragraph (2).

10 (6) If possible, the matter shall be heard before the  
11 same judge of the court who sentenced the prisoner.

12 (f) Any sentence imposed under this article shall be  
13 subject to the provisions of Sections 3000 and 3057 and any  
14 other applicable provisions of law.

15 (g) A sentence to state prison for a determinate term  
16 for which only one term is specified, is a sentence to state  
17 prison under this section.

18 *SEC. 1.5. Section 1170 of the Penal Code is amended*  
19 *to read:*

20 1170. (a) (1) The Legislature finds and declares that  
21 the purpose of imprisonment for crime is punishment.  
22 This purpose is best served by terms proportionate to the  
23 seriousness of the offense with provision for uniformity in  
24 the sentences of offenders committing the same offense  
25 under similar circumstances. The Legislature further  
26 finds and declares that the elimination of disparity and  
27 the provision of uniformity of sentences can best be  
28 achieved by determinate sentences fixed by statute in  
29 proportion to the seriousness of the offense as determined  
30 by the Legislature to be imposed by the court with  
31 specified discretion.

32 (2) Paragraph (1) shall not be construed to preclude  
33 programs, including educational programs, that are  
34 designed to rehabilitate nonviolent, first-time felony  
35 offenders. The Legislature encourages the development  
36 of policies and programs designed to educate and  
37 rehabilitate nonviolent, first-time felony offenders  
38 consistent with the purpose of imprisonment.

39 (3) In any case in which the punishment prescribed by  
40 statute for a person convicted of a public offense is a term

1 of imprisonment in the state prison of any specification of  
2 three time periods, the court shall sentence the  
3 defendant to one of the terms of imprisonment specified  
4 unless the convicted person is given any other disposition  
5 provided by law, including a fine, jail, probation, or the  
6 suspension of imposition or execution of sentence or is  
7 sentenced pursuant to subdivision (b) of Section 1168  
8 because he or she had committed his or her crime prior  
9 to July 1, 1977. In sentencing the convicted person, the  
10 court shall apply the sentencing rules of the Judicial  
11 Council. The court, unless it determines that there are  
12 circumstances in mitigation of the punishment  
13 prescribed, shall also impose any other term ~~which~~ *that*  
14 it is required by law to impose as an additional term.  
15 Nothing in this article shall affect any provision of law  
16 ~~which~~ *that* imposes the death penalty, ~~which~~ *that*  
17 authorizes or restricts the granting of probation or  
18 suspending the execution or imposition of sentence, or  
19 expressly provides for imprisonment in the state prison  
20 for life. In any case in which the amount of  
21 preimprisonment credit under Section 2900.5 or any  
22 other provision of law is equal to or exceeds any sentence  
23 imposed pursuant to this chapter, the entire sentence;  
24 ~~including any period of parole under Section 3000,~~ shall  
25 be deemed to have been served and the defendant shall  
26 not be actually delivered to the custody of the Director  
27 of Corrections. ~~However, that~~ *The court shall advise the*  
28 *defendant that he or she shall serve a period of parole and*  
29 *order the defendant to report to the parole office closest*  
30 *to the defendant's last legal residence, unless the*  
31 *in-custody credits equal the total sentence, including*  
32 *both confinement time and the period of parole. The*  
33 sentence shall be deemed a separate prior prison term  
34 under Section 667.5, and a copy of the judgment and other  
35 necessary documentation shall be forwarded to the  
36 Director of Corrections.

37 (b) When a judgment of imprisonment is to be  
38 imposed and the statute specifies three possible terms,  
39 the court shall order imposition of the middle term, unless  
40 there are circumstances in aggravation or mitigation of

1 the crime. At least four days prior to the time set for  
2 imposition of judgment, either party or the victim, or the  
3 family of the victim if the victim is deceased, may submit  
4 a statement in aggravation or mitigation to dispute facts  
5 in the record or the probation officer's report, or to  
6 present additional facts. In determining whether there  
7 are circumstances that justify imposition of the upper or  
8 lower term, the court may consider the record in the case,  
9 the probation officer's report, other reports including  
10 reports received pursuant to Section 1203.03 and  
11 statements in aggravation or mitigation submitted by the  
12 prosecution, the defendant, or the victim, or the family of  
13 the victim if the victim is deceased, and any further  
14 evidence introduced at the sentencing hearing. The  
15 court shall set forth on the record the facts and reasons for  
16 imposing the upper or lower term. The court may not  
17 impose an upper term by using the fact of any  
18 enhancement upon which sentence is imposed under  
19 ~~Section 667.5, 1170.1, 12022, 12022.4, 12022.5, 12022.6, or~~  
20 ~~12022.7, or under any other~~ provision of law. A term of  
21 imprisonment shall not be specified if imposition of  
22 sentence is suspended.

23 (c) The court shall state the reasons for its sentence  
24 choice on the record at the time of sentencing. The court  
25 shall also inform the defendant that as part of the  
26 sentence after expiration of the term he or she may be on  
27 parole for a period as provided in Section 3000.

28 (d) When a defendant subject to this section or  
29 subdivision (b) of Section 1168 has been sentenced to be  
30 imprisoned in the state prison and has been committed to  
31 the custody of the Director of Corrections, the court may,  
32 within 120 days of the date of commitment on its own  
33 motion, or at any time upon the recommendation of the  
34 Director of Corrections or the Board of Prison Terms,  
35 recall the sentence and commitment previously ordered  
36 and resentence the defendant in the same manner as if  
37 he or she had not previously been sentenced, provided  
38 the new sentence, if any, is no greater than the initial  
39 sentence. The resentence under this subdivision shall  
40 apply the sentencing rules of the Judicial Council so as to



1 eliminate disparity of sentences and to promote  
2 uniformity of sentencing. Credit shall be given for time  
3 served.

4 (e) (1) Notwithstanding any other law and consistent  
5 with paragraph (1) of subdivision (a) of Section 1170, if  
6 the Director of Corrections or the Board of Prison Terms  
7 or both determine that a prisoner satisfies the criteria set  
8 forth in paragraph (2), the director or the board may  
9 recommend to the court that the prisoner's sentence be  
10 recalled.

11 (2) The court shall have the discretion to resentence  
12 or recall if the court finds both of the following:

13 (A) The prisoner is terminally ill with an incurable  
14 condition caused by an illness or disease that would  
15 produce death within six months, as determined by a  
16 physician employed by the department.

17 (B) The conditions under which the prisoner would be  
18 released or receive treatment do not pose a threat to  
19 public safety.

20 The Board of Prison Terms shall make findings  
21 pursuant to this subdivision before making a  
22 recommendation for resentence or recall to the court.  
23 This subdivision does not apply to a prisoner sentenced to  
24 death or a term of life without the possibility of parole.

25 (3) Within 10 days of receipt of a positive  
26 recommendation by the director or the board, the court  
27 shall hold a hearing to consider whether the prisoner's  
28 sentence should be recalled.

29 (4) The prisoner or his or her family member or  
30 designee may request consideration for recall and  
31 resentencing by contacting the chief medical officer at  
32 the prison or the Director of Corrections. Upon receipt of  
33 the request, if the director determines that the prisoner  
34 satisfies the criteria set forth in paragraph (2), the  
35 director or board may recommend to the court that the  
36 prisoner's sentence be recalled. The director shall submit  
37 a recommendation for release within 30 days in the case  
38 of inmates sentenced to determinate terms and, in the  
39 case of inmates sentenced to indeterminate terms, the  
40 director may make a recommendation to the Board of

1 Prison Terms with respect to the inmates who have  
2 applied under this section. The board shall consider this  
3 information and make an independent judgment  
4 pursuant to paragraph (2) and make findings related  
5 thereto before rejecting the request or making a  
6 recommendation to the court. This action shall be taken  
7 at the next lawfully noticed board meeting.

8 (5) Any recommendation for recall submitted to the  
9 court by the Director of Corrections or the Board of  
10 Prison Terms shall include one or more medical  
11 evaluations, a postrelease plan, and findings pursuant to  
12 paragraph (2).

13 (6) If possible, the matter shall be heard before the  
14 same judge of the court who sentenced the prisoner.

15 (f) Any sentence imposed under this article shall be  
16 subject to the provisions of Sections 3000 and 3057 and any  
17 other applicable provisions of law.

18 (g) A sentence to state prison for a determinate term  
19 for which only one term is specified, is a sentence to state  
20 prison under this section.

21 SEC. 2. Section 1170.1 of the Penal Code is amended  
22 to read:

23 1170.1. (a) Except as provided in subdivisions (b)  
24 and (c), and subject to Section 654, when any person is  
25 convicted of two or more felonies, whether in the same  
26 proceeding or court or in different proceedings or courts,  
27 and whether by judgment rendered by the same or by a  
28 different court, and a consecutive term of imprisonment  
29 is imposed under Sections 669 and 1170, the aggregate  
30 term of imprisonment for all these convictions shall be  
31 the sum of the principal term, the subordinate term, and  
32 any additional term imposed for applicable  
33 enhancements for prior convictions, prior prison terms,  
34 and Section 12022.1. The principal term shall consist of  
35 the greatest term of imprisonment imposed by the court  
36 for any of the crimes, including any term imposed for  
37 applicable specific enhancements. The subordinate term  
38 for each consecutive offense which is not a "violent  
39 felony," as defined in subdivision (c) of Section 667.5,  
40 shall consist of one-third of the middle term of

1 imprisonment prescribed for each other felony  
2 conviction for an offense that is not a violent felony for  
3 which a consecutive term of imprisonment is imposed,  
4 and shall exclude any specific enhancements. The  
5 subordinate term for each consecutive offense which is a  
6 “violent felony,” as defined in any paragraph of  
7 subdivision (c) of Section 667.5, shall consist of one-third  
8 of the middle term of imprisonment prescribed for each  
9 other felony conviction for an offense that is a violent  
10 felony for which a consecutive term of imprisonment is  
11 imposed, and shall include one-third of the term imposed  
12 for any specific enhancements applicable to those  
13 subordinate offenses.

14 (b) When a consecutive term of imprisonment is  
15 imposed under Sections 669 and 1170 for two or more  
16 convictions for kidnapping, as defined in Section 207 or  
17 208, involving separate victims, the aggregate term shall  
18 be calculated as provided in subdivision (a), except that  
19 the subordinate term for each subordinate kidnapping  
20 conviction shall consist of the full middle term for each  
21 kidnapping conviction for which a consecutive term of  
22 imprisonment is imposed and shall include the full term  
23 imposed for specific enhancements applicable to those  
24 subordinate offenses.

25 (c) In the case of any person convicted of one or more  
26 felonies committed while the person is confined in a state  
27 prison or is subject to reimprisonment for escape from  
28 custody and the law either requires the terms to be served  
29 consecutively or the court imposes consecutive terms, the  
30 term of imprisonment for all the convictions that the  
31 person is required to serve consecutively shall commence  
32 from the time the person would otherwise have been  
33 released from prison. If the new offenses are consecutive  
34 with each other, the principal and subordinate terms shall  
35 be calculated as provided in subdivision (a). This  
36 subdivision shall be applicable in cases of convictions of  
37 more than one offense in different proceedings, and  
38 convictions of more than one offense in the same or  
39 different proceedings.

1 (d) When the court imposes a prison sentence for a  
2 felony pursuant to Section 1170, the court shall also  
3 impose the additional terms provided for any applicable  
4 enhancements. The court shall also impose any other  
5 additional term that the court determines in its discretion  
6 or as required by law shall run consecutive to the term  
7 imposed under Section 1170. In considering the  
8 imposition of the additional term, the court shall apply  
9 the sentencing rules of the Judicial Council.

10 (e) All enhancements shall be alleged in the  
11 accusatory pleading and either admitted by the  
12 defendant in open court or found to be true by the trier  
13 of fact.

14 (f) When two or more enhancements may be imposed  
15 for being armed with or using a dangerous or deadly  
16 weapon or a firearm in the commission of a single offense,  
17 only the greatest of those enhancements shall be imposed  
18 for that offense. This subdivision shall not limit the  
19 imposition of any other enhancements applicable to that  
20 offense, including an enhancement for the infliction of  
21 great bodily injury.

22 (g) When two or more enhancements may be imposed  
23 for the infliction of great bodily injury in the commission  
24 of a single offense, only the greatest of those  
25 enhancements shall be imposed for that offense. This  
26 subdivision shall not limit the imposition of any other  
27 enhancements applicable to that offense, including an  
28 enhancement for being armed with or using a dangerous  
29 or deadly weapon or a firearm.

30 (h) For any violation of paragraph (2), (3), or (6) of  
31 subdivision (a) of Section 261, paragraph (1) or (4) of  
32 subdivision (a) of Section 262, Section 264.1, subdivision  
33 (b) of Section 288, subdivision (a) of Section 289, or  
34 sodomy or oral copulation by force, violence, duress,  
35 menace, or fear of immediate and unlawful bodily injury  
36 on the victim or another person as provided in Section 286  
37 or 288a, the number of enhancements that may be  
38 imposed shall not be limited, regardless of whether the  
39 enhancements are pursuant to this section, Section 667.6,  
40 or some other section of law. Each of the enhancements

1 shall be a full and separately served enhancement and  
2 shall not be merged with any term or with any other  
3 enhancement.

4 *SEC. 2.5. Section 1170.1 of the Penal Code is amended*  
5 *to read:*

6 1170.1. (a) Except as provided in subdivisions (b)  
7 and (c), and subject to Section 654, when any person is  
8 convicted of two or more felonies, whether in the same  
9 proceeding or court or in different proceedings or courts,  
10 and whether by judgment rendered by the same or by a  
11 different court, and a consecutive term of imprisonment  
12 is imposed under Sections 669 and 1170, the aggregate  
13 term of imprisonment for all these convictions shall be  
14 the sum of the principal term, the subordinate term, and  
15 any additional term imposed for applicable  
16 enhancements for prior convictions, prior prison terms,  
17 and Section 12022.1. The principal term shall consist of  
18 the greatest term of imprisonment imposed by the court  
19 for any of the crimes, including any term imposed for  
20 applicable specific enhancements. The subordinate term  
21 for each consecutive offense which is not a “violent  
22 felony,” as defined in subdivision (c) of Section 667.5,  
23 shall consist of one-third of the middle term of  
24 imprisonment prescribed for each other felony  
25 conviction for an offense that is not a violent felony for  
26 which a consecutive term of imprisonment is imposed,  
27 and shall exclude any specific enhancements. ~~Except as~~  
28 ~~otherwise provided by law, the total of subordinate terms~~  
29 ~~for those consecutive offenses which are not “violent~~  
30 ~~felonies,” as defined in subdivision (c) of Section 667.5,~~  
31 ~~shall not exceed five years.~~ The subordinate term for each  
32 consecutive offense which is a “violent felony,” as defined  
33 in any paragraph of subdivision (c) of Section 667.5, shall  
34 consist of one-third of the middle term of imprisonment  
35 prescribed for each other felony conviction for an offense  
36 that is a violent felony for which a consecutive term of  
37 imprisonment is imposed, and shall include one-third of  
38 the term imposed for any specific enhancements  
39 applicable to those subordinate offenses.

1 (b) When a consecutive term of imprisonment is  
2 imposed under Sections 669 and 1170 for two or more  
3 convictions for kidnapping, as defined in Section 207 ~~or~~  
4 ~~208~~, involving separate victims, the aggregate term shall  
5 be calculated as provided in subdivision (a), except that  
6 the subordinate term for each ~~subsequent subordinate~~  
7 kidnapping conviction shall consist of the full middle  
8 term for each kidnapping conviction for which a  
9 consecutive term of imprisonment is imposed and shall  
10 include the full term imposed for specific enhancements  
11 applicable to those subordinate offenses. ~~The total of the~~  
12 ~~subordinate terms imposed pursuant to this subdivision~~  
13 ~~may exceed five years.~~

14 (c) In the case of any person convicted of one or more  
15 felonies committed while the person is confined in a state  
16 prison or is subject to reimprisonment for escape from  
17 custody and the law either requires the terms to be served  
18 consecutively or the court imposes consecutive terms, the  
19 term of imprisonment for all the convictions ~~which that~~  
20 the person is required to serve consecutively shall  
21 commence from the time the person would otherwise  
22 have been released from prison. If the new offenses are  
23 consecutive with each other, the principal and  
24 subordinate terms shall be calculated as provided in  
25 subdivision (a), ~~except that the total of subordinate terms~~  
26 ~~may exceed five years.~~ This subdivision shall be  
27 applicable in cases of convictions of more than one  
28 offense in different proceedings, and convictions of more  
29 than one offense in the same or different proceedings.

30 (d) When the court imposes a prison sentence for a  
31 felony pursuant to Section 1170, the court shall also  
32 impose the additional terms provided for any applicable  
33 enhancements. The court shall also impose any other  
34 additional term that the court determines in its discretion  
35 or as required by law shall run consecutive to the term  
36 imposed under Section 1170. In considering the  
37 imposition of the additional term, the court shall apply  
38 the sentencing rules of the Judicial Council.

39 (e) All enhancements shall be alleged in the  
40 accusatory pleading and either admitted by the

1 defendant in open court or found to be true by the trier  
2 of fact.

3 (f) When two or more enhancements may be imposed  
4 for being armed with or using a dangerous or deadly  
5 weapon or a firearm in the commission of a single offense,  
6 only the greatest of those enhancements shall be imposed  
7 for that offense. This subdivision shall not limit the  
8 imposition of any other enhancements applicable to that  
9 offense, including an enhancement for the infliction of  
10 great bodily injury.

11 (g) When two or more enhancements may be imposed  
12 for the infliction of great bodily injury in the commission  
13 of a single offense, only the greatest of those  
14 enhancements shall be imposed for that offense. This  
15 subdivision shall not limit the imposition of any other  
16 enhancements applicable to that offense, including an  
17 enhancement for being armed with or using a dangerous  
18 or deadly weapon or a firearm.

19 (h) For any violation of paragraph (2), (3), or (6) of  
20 subdivision (a) of Section 261, paragraph (1) or (4) of  
21 subdivision (a) of Section 262, Section 264.1, subdivision  
22 (b) of Section 288, subdivision (a) of Section 289, or  
23 sodomy or oral copulation by force, violence, duress,  
24 menace, or fear of immediate and unlawful bodily injury  
25 on the victim or another person as provided in Section 286  
26 or 288a, the number of enhancements that may be  
27 imposed shall not be limited, regardless of whether the  
28 enhancements are pursuant to this section, Section 667.6,  
29 or some other section of law. Each of the enhancements  
30 shall be a full and separately served enhancement and  
31 shall not be merged with any term or with any other  
32 enhancement.

33 SEC. 3. Section 1170.13 of the Penal Code is amended  
34 to read:

35 1170.13. Notwithstanding subdivision (a) of Section  
36 1170.1 which provides for the imposition of a subordinate  
37 term for a consecutive offense of one-third of the middle  
38 term of imprisonment, if a person is convicted pursuant  
39 to subdivision (b) of Section 139, the subordinate term for

1 each consecutive offense shall consist of the full middle  
2 term.

3 SEC. 4. Section 1170.15 of the Penal Code is amended  
4 to read:

5 1170.15. Notwithstanding subdivision (a) of Section  
6 1170.1 which provides for the imposition of a subordinate  
7 term for a consecutive offense of one-third of the middle  
8 term of imprisonment, if a person is convicted of a felony,  
9 and of an additional felony that is a violation of Section  
10 136.1 or 137 and that was committed against the victim of,  
11 or a witness or potential witness with respect to, or a  
12 person who was about to give material information  
13 pertaining to, the first felony, or of a felony violation of  
14 Section 653f that was committed to dissuade a witness or  
15 potential witness to the first felony, the subordinate term  
16 for each consecutive offense that is a felony described in  
17 this section shall consist of the full middle term of  
18 imprisonment for the felony for which a consecutive term  
19 of imprisonment is imposed, and shall include the full  
20 term prescribed for any enhancements imposed for being  
21 armed with or using a dangerous or deadly weapon or a  
22 firearm, or for inflicting great bodily injury.

23 SEC. 5. Section 1170.95 of the Penal Code is amended  
24 to read:

25 1170.95. When a subordinate consecutive term of  
26 imprisonment is imposed pursuant to Sections 669 and  
27 1170 that involves one or more convictions for robbery  
28 where it is charged and found that in each of those  
29 robberies that the defendant personally used a deadly or  
30 dangerous weapon in the commission of that robbery, as  
31 provided in subdivision (b) of Section 12022, and each of  
32 those robberies is not a violent felony, as defined in  
33 subdivision (c) of Section 667.5, the aggregate term shall  
34 be calculated as provided in subdivision (a) of Section  
35 1170.1, except that the subordinate term for each  
36 subordinate robbery conviction shall consist of one-third  
37 of the middle term of imprisonment and one-third of the  
38 enhancement provided in subdivision (b) of Section  
39 12022.





1 SEC. 6. Section 1.5 of this bill incorporates  
2 amendments to Section 1170 of the Penal Code proposed  
3 by both this bill and SB 295. It shall only become operative  
4 if (1) both bills are enacted and become effective on or  
5 before January 1, 1999, (2) each bill amends Section 1170  
6 of the Penal Code, and (3) this bill is enacted after SB 295,  
7 in which case Section 1170 of the Penal Code as amended  
8 by SB 295, shall remain operative only until the operative  
9 date of this bill, at which time Section 1.5 of this bill shall  
10 become operative, and Section 1 of this bill shall not  
11 become operative.

12 SEC. 7. Section 2.5 of this bill incorporates  
13 amendments to Section 1170.1 of the Penal Code  
14 proposed by both this bill and AB 1290. It shall only  
15 become operative if (1) both bills are enacted and  
16 become effective on or before January 1, 1999, (2) each  
17 bill amends Section 1170.1 of the Penal Code, and (3) this  
18 bill is enacted after AB 1290, in which case Section 2 of this  
19 bill shall not become operative.

